

## JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDI ARMANDO GONZALEZ DELEON, : CIVIL NO. 1:CV-00-0702  
 :  
 Petitioner : (Caldwell, J.)  
 :  
 v. :  
 :  
 JANET RENO, et al., :  
 :  
 Respondents :

FILED  
HARRISBURG, PA

JUL 27 2000

PER MARY E. D'ANDREA, CLERK  
DEPUTY CLERK

RESPONDENTS' RESPONSE TO THE PETITION FOR  
WRIT OF HABEAS CORPUS

I. INTRODUCTION

On June 12, 2000, Petitioner Fredi Armando Gonzalez DeLeon filed the instant Petition for Writ of Habeas Corpus. In the petition, Gonzalez DeLeon contests his continued detention by the Immigration and Naturalization Service (INS). Gonzalez DeLeon also objects to the INS's appeal of the immigration judge's (IJ) determination that he is eligible for adjustment of status, and asks the Court to make an independent review of the merits of his claim.

On July 6, 2000, Gonzalez DeLeon filed a document entitled "Additional Evidence" which on July 14, 2000, the Court construed as a supplement to the petition.<sup>1</sup> The Court provided Respondents fifteen days from the Court's July 14, 2000, Order to respond. Presently, Respondents file their supplemental response to the petition.

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<sup>1</sup> Gonzalez DeLeon failed to serve counsel with a copy of his supplement.

## II. ARGUMENT

The document filed by Gonzalez DeLeon adds nothing to his case. It is merely the IJ's written decision underlying his May 3, 2000, order releasing Gonzalez DeLeon on his own personal recognizance. (See Resps.' Ex. 6.) Presumably, the IJ issued the written decision because the INS has appealed his release order, as well as his merits determination that Gonzalez DeLeon is eligible for adjustment of status. The IJ's issuance of his written decision does not alter the fact that his May 3, 2000, decision is stayed pending appeal as a result of the INS filing an EOIR Form-43. INS district counsel has informed undersigned counsel that the Board of Immigration Appeals has issued a briefing schedule for the INS's appeal of the IJ's May 3, 2000 release order.

The IJ's written bond decision demonstrates more clearly his basis for granting Gonzalez DeLeon adjustment of status and reveals an error in Respondents' prior response to the petition. The IJ granted Gonzalez DeLeon adjustment of status under § 209(a) of the Immigration and Naturalization Act (INA). See 8 U.S.C. § 1159(a). Respondents misconstrued the IJ's decision as relying on § 245. See 8 U.S.C. § 1255(a). Even under § 209(a) the IJ erred in finding Gonzalez DeLeon eligible for adjustment of status. Section 209(a) permits the adjustment of aliens who entered the United States as refugees under § 207 of the INA, 8

U.S.C. § 1157. See e.g. Yang v. INS, 79 F.3d 932 (9<sup>th</sup> Cir. 1996). Gonzalez DeLeon did not enter the United States as a refugee.


In addition to the above, Respondents noted in their response that Gonzalez DeLeon had written to the IJ requesting that he grant him an order of removal. (See Resps.' Ex. 10.). The IJ has not acted on Gonzalez DeLeon's request, likely because he no longer possesses jurisdiction over the case. Gonzalez DeLeon also wrote to the BIA. (Ex. 11 attached.) The BIA has not yet acted on this request. Counsel will notify the Court of any further developments which might moot Gonzalez DeLeon's claims in the instant case.

### **III. CONCLUSION**

Based upon the foregoing reasons, and the bases outlined in Respondents' Response to the Petition, Respondents respectfully request that the Court deny the petition.

Respectfully submitted,

DAVID M. BARASCH  
United States Attorney

  
DULCE DONOVAN  
Assistant U.S. Attorney  
228 Walnut Street  
P.O. Box 17108-1754  
Harrisburg, PA 17108

Dated: July 27, 2000

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FREDI ARMANDO GONZALEZ DELEON, : CIVIL NO. 1:CV-00-0702  
:   
Petitioner : (Caldwell, J.)  
:   
v. :   
:   
JANET RENO, et al., :   
:   
Respondents :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

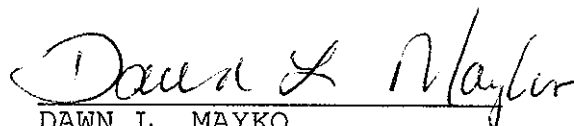
That this 27th day of July, 2000, she served a copy of the attached

RESPONDENTS' SUPPLEMENTAL RESPONSE TO THE PETITION

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE(S):

Fredi Armando Gonzalez DeLeon  
#A70 944 868  
York County Prison  
3400 Concord Road  
York, PA 17402

  
DAWN L. MAYKO  
Legal Secretary

JUL-25-2000 16:08

INS DISTRICT COUNSEL

215 656 7148 P.03

DETAINED AT YORK COUNTY PRISON

Board of Immigration Appeals B.I.A

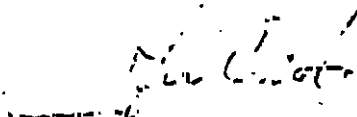
Motion to Expelle and Vacate the Judge's order.

Comes now Respondent, Fredi Gonzalez, pro-se and hereby ask this honorable Board to Allow me to withdraw my applications for relief and order Respondent Removed from the United States based on the charges of the notice to appear

Background

On May 3rd Respondent was Released on his bond and recognized by the Immigration Judge William L. Burke and granted adjustment of status terminating the proceedings the Service sent a notice of Appeal to the Board on May 4th the Respondent also sent a previous letter to this Board expressing his wish to stop this cycle. Wherefore Respondent respectfully ask this Board to Order him Removed from the United States.

Respectfully Submitted



Fredí Armando Gonzalez de Leon

Exhibit 1

JUL-25-2000 16:07

INS DISTRICT COUNSEL

215 656 7148 P.02/03

Fredi Armando Gonzalez De-Leon  
York County Prison 3400 Concord Rd. 17402

05/11/2000

File# A70 944 068

BOARD OF IMMIGRATION APPEALS (B.I.A.)

Comes now Fredi Armando Gonzalez De-Leon, pro-se and hereby ask this honorable Board to permit respondent to withdraw the Service's appeal on it's bond redetermination and order respondent removed from the United States being this what ultimately the Service whants.

Wherefore respondent respectfully ask this Board to vacate the Judge's decision releasing respondent on it's own recognizance.

RECEIVED  
JUL 25 2000  
JUL -2 A 11:39  
BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK

RESPECTFULLY SUBMITTED

FREDI/ARMANDO GONZALEZ DE-LEON

5-31-2000

CERTIFICATE OF SERVICE

I, the undersigned certify under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and bilief. That the statements contained herein are of own. I cause to be serve on the following address.

BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK.

5201 Leesburg Pike, Suite 1300  
Falls Church, Virginia 22041

CC: INS/YOR emw/ast 6/8/00